

Message Text

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TAGS: ENRG, CA

SUBJECT: ALASKA GAS PIPELINE -- CONGRESSIONAL INTEREST

FOLLOWING ARE TEXTS OF LETTERS FROM DINGELL AND CLARENCE
BROWN TO PRESIDENT CARTER, SECRETARIES VANCE AND
SCHLESINGER. RESPONSES WILL FOLLOW BY SEPTTEL WHEN AVAIL-
ABLE.

1. BEGIN TEXT OF FEBRUARY 21 LETTER FROM DINGELL/BROWN
TO PRESIDENT CARTER:

DEAR MR. PRESIDENT:

WE HAVE BEEN ADVISED THAT THE GOVERNMENT OF CANADA
IS IN THE PROCESS OF ADOPTING POLICIES FOR THEIR PART OF
THE CANADIAN-U.S. NATURAL GAS PIPELINE WHICH WILL PRECLUDE
BIDS BY UNITED STATES FIRMS ON THE STEEL WHICH WILL BE
USED ON THE CANADIAN PORTION OF THE PIPELINE; THAT THESE
POLICIES COULD INVOLVE LESS THAN COMPETITIVE "ARMS-LENGTH"
DEALING BETWEEN THE CANADIAN COMPANY BUILDING AND OPER-
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ATING THE PIPELINE AND A CANADIAN STEEL COMPANY IN WHICH
THE BUILDER AND A CANADIAN PROVINCE OWN A SUBSTANTIAL
INTEREST; AND THAT THE RESULT OF THIS DEVELOPMENT COULD
DELAY THE COMPLETION OF THE PIPELINE AND ITS GAS TO U.S.

CUSTOMERS WHO WILL PAY FOR THE GAS WHICH WILL BE BROUGHT
TO THE LOWER 48 STATES BY THIS PROJECT.

WE HAVE WRITTEN TO SECRETARY OF STATE CYRUS VANCE
AND SECRETARY OF ENERGY JAMES SCHLESINGER TO EXPRESS OUR

CONCERN ON THIS MATTER, AND HAVE ENCLOSED COPIES OF THOSE LETTERS FURTHER EXPLAINING THIS SITUATION.

AS TWO MEMBERS OF CONGRESS WHO SUPPORTED THIS U.S.-CANADIAN PROJECT ON THE STRENGTH OF ASSURANCES FROM THE ADMINISTRATION THAT INTERESTS OF UNITED STATES TAXPAYERS, CONSUMERS, BUSINESS AND LABOR WOULD BE FULLY PROTECTED BY THE PIPELINE AGREEMENTS CONCLUDED WITH CANADA BY THE ADMINISTRATION, WE FEEL THAT YOU SHOULD VIGOROUSLY PROTEST THESE POLICIES BEING DEVELOPED IN CANADA. THERE IS EITHER A FUNDAMENTAL MISUNDERSTANDING OF THE AGREEMENTS BY CANADA OR BY YOUR SPOKESMEN WHO TOLD US CATEGORICALLY THAT THE AGREEMENTS ASSURED OPEN COMPETITIVE BIDDING ON ALL THE PIPELINE TO GIVE BIDDERS FROM ALL COUNTRIES EQUAL OPPORTUNITIES AND TO HOLD COSTS FOR USERS TO A MINIMUM AS A RESULT OF THAT COMPETITION. END TEXT.

2) BEGIN TEXT OF FEB 21 FROM DINGELL/BROWN TO SECRETARY VANCE:

DEAR MR. SECRETARY:
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WE ARE DEEPLY DISTURBED BY RECENT EVENTS IN CANADA WITH RESPECT TO EFFORTS TO CONSTRUCT A PIPELINE TO CARRY NATURAL GAS FROM ALASKA THROUGH CANADA TO THE LOWER 48 STATES. IT APPEARS THAT SEVERAL RECENT ACTIONS BY THE CANADIAN GOVERNMENT MAY BE INCONSISTENT WITH AGREEMENTS WITH THE UNITED STATES, COSTING UNITED STATES' CONSUMERS ADDITIONAL HUNDREDS OF MILLIONS OF DOLLARS AND SEVERELY DISADVANTAGING UNITED STATES' MANUFACTURERS, PARTICULARLY OUR STEEL INDUSTRY.

ON NOVEMBER 3, 1977, THE CONGRESS ADOPTED A JOINT RESOLUTION APPROVING THE PRESIDENT'S DECISION SELECTING THE ALCAN PIPELINE SYSTEM (NOW KNOWN AS THE NORTHWEST ALASKAN PIPELINE COMPANY) TO DELIVER NATURAL GAS FROM ALASKA. A U.S.-CANADIAN AGREEMENT ON PRINCIPLES WAS SUBMITTED AS PART OF THE PRESIDENT'S DECISION.

THE AGREEMENT ON PRINCIPLES, AMONG OTHER THINGS, COMMITTED EACH GOVERNMENT TO THE POSITION THAT THE SUPPLY OF GOODS AND SERVICES TO THE PIPELINE PROJECT WOULD BE ON GENERALLY COMPETITIVE TERMS. IN THIS CONNECTION, DEPUTY ASSISTANT SECRETARY OF STATE BOSWORTH TESTIFIED BEFORE OUR SUBCOMMITTEE THAT THIS PROVISION "ASSURED THAT AMERICAN MATERIALS SPECIFICALLY WILL HAVE ACCESS TO INPUTS INTO THIS PIPELINE ON A COMPETITIVE BASIS". IN ADDITION, THE AGREEMENT ON PRINCIPLES LIMITED DIRECT CHARGES WHICH MAY BE IMPOSED ON THE PIPELINE TO THOSE THAT ARE NORMALLY PAID BY PIPELINE COMPANIES IN CANADA.

RECENT EVENTS IN CANADA LEAD US TO CONCLUDE THAT THE CANADIAN GOVERNMENT MAY ALREADY BE IN VIOLATION OF ITS COMMITMENTS IN THE AGREEMENT ON PRINCIPLES AND THE PROHIBITION AGAINST DISCRIMINATORY TREATMENT CONTAINED IN THE TRANSIT PIPELINE TREATY.

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FIRST, THE CANADIAN PIPELINE ENABLING LEGISLATION WAS INTRODUCED IN THE HOUSE OF COMMONS ON FEBRUARY 3, 1978. THIS LEGISLATION REQUIRES THAT THE LEVEL OF CANADIAN GOODS AND SERVICES FOR THE PIPELINE (CALLED CANADIAN CONTENT) BE "MAXIMIZED". THE LEGISLATION ALSO REQUIRES THAT MAXIMUM ADVANTAGE BE TAKEN OF OPPORTUNITIES PROVIDED BY THE PIPELINE TO ESTABLISH AND EXPAND SUPPLIERS IN CANADA. IN ADDITION, THE LEGISLATION

ESTABLISHES A MECHANISM WHICH GIVES THE CANADIAN FEDERAL GOVERNMENT THE POWER TO BLOCK PROPOSED PIPELINE CONTRACTS FOR GOODS AND SERVICES NEGOTIATED BY THE CANADIAN PIPELINE COMPANY (CALLED FOOTHILLS) THAT FAIL TO PROVIDE SUFFICIENT CANADIAN CONTENT. THE OFFICIAL CANADIAN PRESS RELEASE ACCOMPANYING THE INTRODUCTION OF THE LEGISLATION SAID THAT THIS CONDITION WAS "IN KEEPING WITH FOOTHILLS' STATED OBJECTIVE OF ACHIEVING SOME 90 PERCENT CANADIAN CONTENT".

RESTRICTIONS SIMILAR TO THOSE PROPOSED BY THE CANADIAN GOVERNMENT ARE CONSPICUOUSLY ABSENT FROM THE PRESIDENT'S DECISION.

SECOND, THE AGREEMENT ON PRINCIPLES BETWEEN THE U.S. AND CANADA SPECIFIED THAT THE TECHNICAL STUDY GROUP WOULD ADDRESS THE ISSUE OF THE DIAMETER AND OPERATING PRESSURES FOR THE 1100-MILE PORTION OF THE CANADIAN PIPELINE (BETWEEN WHITEHORSE AND CAROLINE JUNCTION) THAT WOULD CARRY A COMMINGLED STREAM OF ALASKAN AND CANADIAN NATURAL GAS. THE TECHNICAL STUDY GROUP WAS REQUIRED TO TEST AND EVALUATE 54-INCH 1120 POUNDS PER SQUARE INCH (PSI), 48-INCH 1260 PSI AND 48-INCH 1680 PSI PIPE, OR ANY OTHER COMBINATION OF PRESSURE AND DIAMETER WHICH UNCLASSIFIED

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WOULD ACHIEVE SAFETY, RELIABILITY AND ECONOMIC EFFICIENCY FOR OPERATION OF THE PIPELINE. THE AGREEMENT ON PRINCIPLES SPECIFICALLY RECOGNIZED THAT THE DECISION RELATING TO PIPELINE SPECIFICATIONS REMAINED THE RESPONSIBILITY OF THE APPROPRIATE REGULATORY AUTHORITIES.

THE UNITED STATES HAS INFORMED CANADA THAT IT PREFERS THE 48-INCH 1680 PSI ALTERNATIVE FOR THE PORTION OF THE PIPELINE BETWEEN WHITEHORSE AND CAROLINE JUNCTION. THE 48-INCH SYSTEM IS CONSIDERED TO HAVE THE LOWEST COST OF SERVICE.

THE U.S. STEEL INDUSTRY CURRENTLY HAS ONE FACILITY CAPABLE OF MANUFACTURING 48-INCH PIPE. PRESUMABLY UNDER THE AGREEMENT ON PRINCIPLES THIS COMPANY WOULD HAVE A FAIR OPPORTUNITY TO SUPPLY PIPE FOR THIS PORTION OF THE PIPELINE.

YESTERDAY, HOWEVER, CANADA ANNOUNCED IT HAS SELECTED A 56-INCH 1080 PSI SYSTEM FOR THIS SEGMENT OF THE PIPELINE SYSTEM. THE COST OF SERVICE OF THIS SYSTEM IS GREATER THAN THAT FOR A 48-INCH SYSTEM. USING 56-INCH PIPE IS ESTIMATED TO COST U.S. CONSUMERS ADDITIONAL HUNDREDS OF MILLIONS OF DOLLARS OVER A 20-YEAR PERIOD.

CANADA CURRENTLY HAS TWO FACILITIES CAPABLE OF MANUFACTURING 56-INCH PIPE. ONE OF THESE FACILITIES IS AN AFFILIATE OF ONE OF THE CANADIAN PIPELINE COMPANIES CONSTRUCTING THE PIPELINE SYSTEM IN CANADA. THE UNITED STATES PRESENTLY DOES NOT HAVE ANY FACILITIES THAT PRODUCE 56-INCH PIPE. WE UNDERSTAND THAT OTHER COUNTRIES SUCH AS JAPAN AND GERMANY CAN PRODUCE 56-INCH PIPE.

BOTH OF THESE ACTIONS BY THE CANADIAN GOVERNMENT APPEAR TO BE INCONSISTENT WITH CANADA'S PROMISE TO ENSURE UNCLASSIFIED

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THAT THE SUPPLY OF GOODS AND SERVICES TO THE PIPELINE PROJECT WOULD BE ON GENERALLY COMPETITIVE TERMS. BOTH ACTIONS EFFECTIVELY DENY A FAIR AND COMPETITIVE OPPORTUNITY FOR U.S. MANUFACTURERS TO PARTICIPATE IN THE SUPPLY OF GOODS AND SERVICES TO THE PIPELINE IN CANADA.

FINALLY, THE CANADIAN LEGISLATION ESTABLISHES A "NORTHERN PIPELINE AGENCY", THE MECHANISM BY WHICH THE CANADIAN GOVERNMENT WILL CONTROL THE CANADIAN CONTENT OF THE PIPELINE PROJECT. THE LEGISLATION PROVIDES THAT THE COST OF OPERATING THIS AGENCY WILL BE CHARGED TO THE PIPELINE. THUS, THE COST OF THIS AGENCY WILL BE BORNE IN LARGE MEASURE BY U.S. CONSUMERS. IT IS OUR UNDERSTANDING THIS REQUIREMENT IS NEW AND IS NOT A CHARGE THAT HAS NORMALLY BEEN PAID BY PIPELINE COMPANIES IN CANADA. IT, THEREFORE, APPEARS TO VIOLATE THE AGREEMENT ON PRINCIPLES AND THE TRANSIT PIPELINE TREATY'S PROHIBITION ON DISCRIMINATORY TREATMENT.

THIS MATTER RAISES SERIOUS CONCERNS WITH RESPECT TO

THE DEGREE TO WHICH THE CANADIAN GOVERNMENT CONSIDERS ITSELF LEGALLY BOUND BY THE AGREEMENT ON PRINCIPLES AND THE TRANSIT PIPELINE TREATY. TO THE EXTENT THESE DOCUMENTS GO UNHEEDED, THE PRESIDENT'S DECISION ON THIS MATTER HAS BEEN SEVERELY UNDERMINED.

THE AGREEMENT ON PRINCIPLES PROVIDES FOR COORDINATION AND CONSULTATION BETWEEN THE U-S. AND CANADA ON THE IMPLEMENTATION OF THE PRINCIPLES RELATING TO THE CONSTRUCTION AND OPERATION OF THE PIPELINE. WE REQUEST THAT YOU INFORM US OF THE CONSULTATIONS THAT HAVE OCCURRED BETWEEN THE UNITED STATES AND CANADA ON THE MATTERS RAISED IN THIS LETTER BEFORE CANADA TOOK EACH UNCLASSIFIED

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OF ITS ACTIONS. IN ADDITION, WE REQUEST THAT YOU TAKE APPROPRIATE ACTIONS TO ENSURE THAT THE RESPONSIBILITIES OF THE CANADIAN GOVERNMENT WITH RESPECT TO THE AGREEMENT ON PRINCIPLES AND THE TRANSIT PIPELINE TREATY

ARE RESPONSIBLY AND FAITHFULLY DISCHARGED. END TEXT.

3. BEGIN TEXT OF FEBRUARY 22 LETTER FROM DINGELL/BROWN TO SECRETARY SCHLESINGER:

(FIRST PARAGRAPHS OF LETTER TO SCHLESINGER ARE ESSENTIALLY THE SAME AS IN THE LETTER TO VANCE. TEXT BELOW REPEATS LAST PARAGRAPH WHICH APPEARS IN BOTH LETTERS AND CONTINUES TO CONCLUSION OF LETTER TO SCHLESINGER.)

BOTH OF THESE ACTIONS BY THE CANADIAN GOVERNMENT APPEAR TO BE INCONSISTENT WITH CANADA'S PROMISE TO ENSURE THAT THE SUPPLY OF GOODS AND SERVICES TO THE PIPELINE PROJECT WOULD BE ON GENERALLY COMPETITIVE TERMS. BOTH ACTIONS EFFECTIVELY DENY A FAIR AND COMPETITIVE OPPORTUNITY FOR U.S. MANUFACTURERS TO PARTICIPATE IN THE SUPPLY OF GOODS AND SERVICES TO THE PIPELINE IN CANADA.

THE SUBCOMMITTEE SPECIFICALLY INQUIRED INTO THE OPERATION OF SECTION 7 OF THE AGREEMENT ON PRINCIPLES AT OUR HEARING HELD ON OCTOBER 14, 1977. SUBCOMMITTEE COUNSEL ASKED WHO WOULD BE RESPONSIBLE FOR DETERMINING THAT MATERIALS PURCHASED BY THE CANADIANS WOULD BE ON GENERALLY COMPETITIVE TERMS. MR. GOLDMAN OF YOUR STAFF RESPONDED THAT THE FEDERAL INSPECTOR WOULD MOST LIKELY BE RESPONSIBLE AND WOULD "THROUGH THE CONSULTATIVE PROCESSES ESTABLISHED IN THE AGREEMENT, HAVE THAT RAISED WITH THE CANADIANS ..." THE FOLLOWING COLLOQUY THEN TOOK PLACE:

"MR. BRAUN. HAVE THE CANADIANS COMMITTED TO MAKE UNCLASSIFIED

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ALL DOCUMENTS THAT ARE RELAVANT TO THE CONSTRUCTION AND OPERATION OF THIS PIPELINE AVAILABLE TO YOU UNDER THIS SECTION? (SECTION 7)."

"MR. GOLDMAN. WE HAVE NO SPECIFIC COMMITMENT FROM THEM ABOUT INDIVIDUAL DOCUMENTS. THE WHOLE TENOR OF THE AGREEMENT AND THE CONSULTATIVE PROCESSES ESTABLISHED IN THE AGREEMENT LEAD US TO BELIEVE THAT THAT SHOULD NOT BE A PROBLEM."

IN LIGHT OF THE ACTIONS BY THE CANADIAN GOVERNMENT DETAILED IN THIS LETTER IT WOULD APPEAR THAT THE CONSULTATIVE PROCESSES ESTABLISHED IN THE AGREEMENT HAVE EITHER NOT BEEN USED OR HAVE BEEN UNSUCCESSFUL. ACCORDINGLY, WE REQUEST THAT YOU INFORM US OF THE CONSULTATIONS THAT HAVE OCCURRED BETWEEN THE UNITED STATES AND CANADA ON THE MATTERS RAISED IN THIS LETTER.

EVEN MORE DISTURBING IS THE FAILURE OF THE AGREEMENT ON PRINCIPLES TO GUARANTEE THAT THE UNITED STATES WILL HAVE ACCESS TO ALL THE MATERIALS RELEVANT TO A DETERMINATION OF WHETHER, IN FACT, THE GOODS AND SERVICES PROCURED FOR THE PIPELINE IN CANADA MEET THE TEST OF COMPETITIVENESS SET FORTH IN SECTION 7. THE MATTERS RAISED

IN THIS LETTER INDICATE TO US THAT YOU SHOULD MOVE EXPEDITIOUSLY TO OBTAIN A COMMITMENT FROM THE CANADIAN GOVERNMENT THAT THE UNITED STATES WILL HAVE ACCESS TO ALL THE INFORMATION NECESSARY TO ENFORCE THE TERMS OF SECTION 7 SO THAT AMERICAN INDUSTRY WILL BE ASSURED OF A FAIR AND COMPETITIVE OPPORTUNITY TO SUPPLY GOODS AND SERVICES TO THE PIPELINE IN CANADA.

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THIS MATTER RAISES SERIOUS CONCERNS WITH RESPECT TO THE DEGREE TO WHICH THE CANADIAN GOVERNMENT CONSIDERS ITSELF LEGALLY BOUND BY THE AGREEMENT ON PRINCIPLES AND THE TRANSIT PIPELINE TREATY. TO THE EXTENT THESE DOCUMENTS GO UNHEEDED, THE PRESIDENT'S DECISION ON THIS MATTER HAS BEEN SEVERELY UNDERMINED. END TEXT. VANCE

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